IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs February 20, 2007

STATE OF TENNESSEE v. DARRIN R. SHEFFIELD

Direct Appeal from the Circuit Court for Humphreys County
No. 11103 Robert E. Burch, Judge

No. M2006-00919-CCA-R3-CD - Filed on June 21, 2007

Defendant, Darrin R. Sheffield, pled guilty to charges of possession of methamphetamine and promotion of the manufacturing of methamphetamine. He was sentenced to serve five years for the possession conviction and three years for the manufacturing conviction, to be served concurrently for a total effective sentence of five years. Prior to the guilty plea, Defendant moved the court to suppress evidence taken during the traffic stop which led to Defendant's arrest. The motion was denied, and the resulting plea was taken subject to the appeal of a certified question of law. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

William B. Lockert, III, District Public Defender; and Haylee A Bradley, Assistant Public Defender, for the appellant, Darrin R. Sheffield.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General; Dan Mitchum Alsobrooks, District Attorney General; and Lisa C. Donegan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

The following evidence was presented at the hearing on the motion to suppress: On September 18, 2005, Officer Wesley Hagler, of the Waverly Police Department, was on daytime patrol when he observed Defendant's vehicle stopped at a stop sign pointed eastbound on East Railroad Street. Officer Hagler was stopped facing Defendant's direction when he noticed that Defendant was not wearing a seatbelt. Officer Hagler turned onto East Railroad Street to follow Defendant's vehicle and observe him more closely. As Officer Hagler approached the vehicle, the

vehicle turned into the driveway of a house located on East Railroad Street. It was then that Officer Hagler noticed another passenger in the vehicle. Officer Hagler was familiar with the residence and knew it to be the home of an elderly couple. He thought Defendant's vehicle was out of place at the residence. Officer Hagler saw that the vehicle had Carroll County registration, "ran" the tags, and learned that the vehicle was properly registered. He continued driving past the driveway, turned around, and headed westbound back toward the vehicle. As he approached the driveway a second time, Officer Hagler noticed that both Defendant and the other passenger were outside the vehicle. The men then got back into the vehicle, backed out of the driveway, and continued driving eastbound. Officer Hagler thought this behavior was strange since the stop lasted no longer than 45 seconds.

Officer Hagler once again got behind Defendant's vehicle. After a short distance, the vehicle turned into a second driveway. Officer Hagler pulled into the driveway behind the vehicle and turned on his blue lights. Defendant exited the vehicle and met Officer Hagler between his car and the patrol car. At the officer's request, Defendant gave his driver's license to Officer Hagler and explained that he was "looking for someone," but Officer Hagler did not recognize the name and thought the story was suspicious. Defendant said that the passenger in the car was Billy Charnock. Officer Hagler was familiar with Mr. Charnock and was "almost certain" there was an active warrant for his arrest. He proceeded to the car to speak to Mr. Charnock regarding the warrant.

Upon approaching the vehicle, Officer Hagler instructed Mr. Charnock to exit the vehicle. When Mr. Charnock opened the door to the vehicle, Officer Hagler saw the corner of a plastic sandwich bag, lithium batteries, and a foil pill packet in the floorboard in plain view. The pill packet was similar to the type used to package Sudafed and other allergy medications. Officer Hagler also smelled a "strong chemical odor not consistent with gasoline or things of that nature." Officer Hagler testified that the odor was consistent with chemicals used to manufacture methamphetamine, such as ether or anhydrous ammonia. Defendant denied having any drugs or anything illegal in the car.

In response to a request, Defendant told Officer Hagler that he did not want him to search the vehicle. He said the pill packet was from his wife's prescription allergy medication and that the prescription was in the console of the vehicle. When Officer Hagler looked in the console, he discovered a pair of metal hemostats with the tips blackened. Officer Hagler recognized the hemostats as a common item of drug paraphernalia so he continued to search the car. In the backseat, Officer Hagler found a duffle bag containing digital scales and a "bag of green leafy material" that he suspected was marijuana. After finding the marijuana, Officer Hagler placed Defendant under arrest. Pursuant to the arrest, he conducted a pat down search of Defendant's person and found methamphetamine in Defendant's watch pocket. In the trunk of the vehicle, Officer Hagler discovered a large duffle bag containing hoses, plastic jugs, containers, and approximately five hundred tablets of pseudoephedrine, all items used in manufacturing methamphetamine.

There is some discrepancy as to the sequence of events that occurred immediately prior to Officer Hagler approaching the car. As part of his direct testimony, Officer Hagler testified that after making the stop, he radioed the dispatcher who informed him there was a pending warrant for Mr. Charnock's arrest. Officer Hagler then relayed this information to Defendant and proceeded to the car to speak with Mr. Charnock regarding the warrant. On cross-examination, however, Defense counsel played a video tape of the stop. After watching the video tape, Officer Hagler changed his testimony. According to the revised version of events, after making the stop, Officer Hagler radioed the dispatcher who initially responded that there was a "possibility" that there was an active warrant for Mr. Charnock's arrest. Approximately "two or three minutes" elapsed and the dispatcher informed Officer Hagler that there was no existing warrant. It was only after learning that no warrant existed that Officer Hagler mentioned the warrant issue to Defendant and Mr. Charnock and then only to inform the men that there was no warrant. Officer Hagler further admitted that at the time he made the stop in the second driveway, he did not know whether either of the individuals in the vehicle was wearing a seatbelt. However, he said it was not his intention to cite Defendant and Mr. Charnock for the seatbelt violation. Rather, his intent was to stop the vehicle in order to investigate the suspicious circumstances and events preceding the stop.

It is evident from the transcript that the video tape of the stop was an integral part of the evidence at the hearing and potentially clarified the inconsistencies in the officer's testimony. Nevertheless, the video tape was not made an exhibit at the hearing, and therefore it is not a part of the record on appeal. As such, we have no choice but to accept the trial court's findings of fact in this regard. A review of those findings shows that the trial court believed the officer legitimately thought there was a warrant for Mr. Charnock's arrest, and the officer properly detained the two men until such time as he learned the warrant was non-existent.

II. Analysis

A. Certified Question

As noted above, this appeal comes before us as a certified question of law pursuant to Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure. Accordingly, we must first determine whether the question presented is dispositive of the case. Tennessee Rule of Criminal Procedure 37(b)(2) provides, in pertinent part, that a defendant may appeal from any judgment of conviction on a plea of guilty if:

> (A) the defendant entered into a plea agreement under Rule 11(a)(3) but explicitly reserved - with the consent of the state and of the court - the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:
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> > (i) the judgment of conviction or other document to which such judgment refers that is filed before the notice of appeal, contains a

> statement of the certified question of law that the defendant reserved for appellate review;
> (ii) the question of law is stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
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> (iii) the judgment or document reflects that the certified question was expressly reserved with the consent of the state and the trial court; and
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> (iv) the judgment or document reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case.

Tenn. R.Crim. P. 37(b)(2). Defendant raises the following certified question of law: Whether the stop of Defendant's vehicle was a "Terry Stop," whether the stop was supported by reasonable suspicion, and whether the officer detained the defendant for an unreasonable period of time? The judgments of conviction set forth the certified question reserved for appeal, the scope of the question, the consent of the state and the trial court, and their agreement that the issue is dispositive. The prerequisites for consideration of a certified question of law are satisfied in this case. Accordingly, we will address Defendant's issue.

B. Motion to Suppress

Defendant argues that the stop of his vehicle was unconstitutional because Officer Hagler did not have reasonable suspicion to believe the occupants of the vehicle had committed a crime or were about to commit a crime. Defendant contends that the trial court improperly found that Defendant's behavior fit the "MO for a daylight burglary." He argues that there was no testimony that any burglaries had occurred in the area, no testimony that it was a high crime area, and the officer's reasons for the stop - the vehicle's out-of-town tags, the brief stop at the first residence, and his feeling that the vehicle did not belong to the residence - were insufficient to create reasonable suspicion that a burglary had been or was about to be committed. Defendant also argues that even if the stop was a traffic stop and not an investigatory stop, his constitutional rights were still violated because he was detained for an unreasonable period of time.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *State v. Jones*, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Odom*, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and "article 1, section 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment." *State v. Downey*, 945 S.W.2d 102, 106 (Tenn. 1997) (quoting *Sneed v. State*, 221 Tenn. 6, 13, 423 S.W.2d 857, 860 (1968)). In order to stop a vehicle without a warrant, a law enforcement officer must have "probable cause, or reasonable suspicion supported by specific and articulable facts, to believe that an offense has been or is about to be committed." *State v. Troxell*, 78 S.W.3d 866, 871 (Tenn. 2002) (citing *State v. England*, 19 S.W.3d 762, 765 (Tenn. 2000)). A vehicle stop is constitutional if an officer has probable cause or reasonable suspicion to believe that a traffic violation has occurred. *State v. Vineyard*, 958 S.W.3d 730, 734 (Tenn. 1997). In determining whether a vehicle stop was constitutionally justified, we look not at the subjective motivation of the stopping officer, but at whether there was in fact probable cause to believe a violation had occurred. *See Whren v. United States*, 517 U.S. 806, 813, 112 S. Ct. 1769, 1774 (1996). The fact that a reasonable police officer might not have stopped the vehicle for the alleged traffic violation does not render the stop illegal. *Whren v. United States*, 517 U .S. 806, 812-13, 116 S. Ct. 1769, 1774 (1996). The federal Sixth Circuit and this Court have previously upheld vehicle stops based on violations of the state's seatbelt law. *U.S. v. Draper*, 22 Fed. Appx. 413, 415 (6th Cir. 2001); *State v. Carl Martin*, No. W2002-00066-CCA-R3-CD, 2003 WL 57311, at *4 (Tenn. Crim. App., at Jackson, Jan. 2, 2003) (no Tenn. R. App. P. 11 application filed).

In the case herein, Officer Hagler testified that when he initially observed Defendant at the East Railroad Street intersection, he saw Defendant was not wearing a seatbelt. The trial court accredited Officer Hagler's testimony stating, "I have absolutely no problem believing everything the officer said. He said, he saw them[,] that they didn't have a seat belt; but he wasn't going to write them for it. He wasn't going to pull them over for that." There is nothing in the record that preponderates against the trial court's findings.

The state seatbelt law requires a driver and passengers to wear safety belts when a vehicle is in forward motion. *See* T.C.A. § 55-9-603(a)(1). Thus, upon seeing Defendant driving the car without wearing his seatbelt, Office Hagler had probable cause to believe that Defendant was in violation of the state seatbelt law. It is of no consequence that Officer Hagler had no intention to cite Defendant for violation of the seatbelt law. Likewise, it does not matter that Officer Hagler primarily wanted to investigate the suspicious conduct by Defendant and his passenger. The officer's initial observation that Defendant was not wearing his seatbelt was sufficient justification for the stop. Once the stop was made, the officer's detention of Defendant was not unreasonable in light of the sequence of events which occurred. The observation of evidence of contraband in plain view in the vehicle justified a search of the interior of the vehicle, *State v. Byerley*, 635 S.W.2d 511, 513-14 (Tenn. 1982), a search of the trunk of the vehicle, *United States v. Ross*, 456 U.S. 798, 820-21,102 S. Ct. 2157, 2170-71 (1982), *State v. McCall*, 698 S.W.2d 643, 649 (Tenn. Crim. App. 1985), and a search of Defendant's person and seizure of the evidence discovered as a result of the search of his person. *State v. Crutcher*, 989 S.W.2d 295, 300 (Tenn. 1999); *Rawlings v. Kentucky*, 448 U.S. 98, 111, 100 S. Ct. 2556, 2564 (1980). Accordingly, the trial court did not err in denying Defendant's motion to suppress.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE